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THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1997]

GE.97-13209 (E)

TORTURE IN MEXICO: TOTAL IMPUNITY

1. Torture is still commonly practised in Mexico and has increased considerably in recent years. One of the principal factors that has made it impossible to eradicate this practice is the impunity enjoyed by the public officials who carry it out. There is also impunity in the case of arbitrary detentions, holding incommunicado, fabrication of offences, searching of dwellings, disappearances, homicides, etc., where those responsible are rarely punished.

2. Last March the diplomatic mission of Mexico at Geneva stated in the United Nations Commission on Human Rights: "... at present, if an authority abuses its powers it incurs a penalty. Violations of human rights are reprehensible acts that are not institutionalized in Mexico. I shall conclude by giving an illustration of this fact: for the last six and a half years, as a consequence of the activities of the National Human Rights Commission, (CNDH), ... a total of 2,567 public officials incurred penalties for offences connected with torture". 1/

3. However, the figure mentioned by the Mexican delegation in the Commission refers to the number of public officials who incurred penalties 2/ as a consequence of all the recommendations and mediation efforts of the National Human Rights Commission, and not only for offences connected with torture. 3/ We are greatly concerned to note that the Government of Mexico manipulates CNDH figures before international agencies in order to give the impression that impunity with respect to the practice of torture has been eradicated.

4. The Mexican Government generally bases its reports on the human rights situation on CNDH figures and it therefore seems to us inappropriate that these figures should be manipulated without the full data being furnished.

5. In view of the gravity of the practice of torture, an analysis of impunity in respect of it enables us to make assumptions concerning the prevalence of impunity in Mexico as far as the perpetrators of violations of human rights are concerned.

6. In its seven years of existence, the CNDH has made 1,179 recommendations, 112 of which relate to cases in which torture is alleged to have been committed. In other words, 9.5 per cent of the National Commission's recommendations have related to such cases.

7. In 1991 the CNDH stated: "... the National Commission cannot and should not make statements concerning it (torture) unless it has a basis for doing so, such as proof or credible evidence ... . In the absence of proof, the National Human Rights Commission cannot endorse accusations of torture". 4/

8. Analysis and follow-up of the recommendations concerning torture that have been made clearly show the impunity that prevails in Mexico. Having regard to the fact that the National Commission makes a recommendation only when it is sure of the facts and has evidence, we should expect that, at least in those cases, there would be no impunity. However, the number of public

officials who have been the subject of criminal proceedings as a result of these recommendations is far smaller than the number of those who took part in acts of torture. 5/

9. As the laws enacted to combat and punish acts of torture are not applied impartially, effectively and continuously, criminal actions 6/ are rarely brought for cases of torture. The Federal Law on the Prevention and Punishment of Torture in Mexico 7/ may be said to be a dead letter, since it is virtually not implemented. Even in those cases where the Law is implemented, impunity is the rule. 8/

10. There is still impunity in cases where, as a consequence of torture, the victims died. 9/ In such cases criminal actions were not brought for torture, but only for homicide, although the Mexican Government manipulates the figures to suggest that penalties were imposed for torture 10/, as the deaths were a consequence of acts of torture.

11. We wish again to state that in Mexico acts of torture are not adequately investigated in an independent fashion, since it is common for those investigating such acts also to know and protect those they are investigating. This applies also in the case of other violations of human rights. In the best of cases, despite the fact the CNDH provides evidence of torture, the Government Procurator's Office charged with the investigation brings criminal actions only on charges of causing bodily injury, and even then the perpetrators go unpunished. 11/

12. Further complicity will be noted when we see that in most cases where acts of torture are investigated the Government Procurator's Office decides to charge only with misdemeanours 12/ and the accused is released on recognizance. 13/ The fact that the National Commission does not report the offences in respect of which criminal action is brought 14/, or indicate whether or not arrest warrants are issued 15/ leads one to doubt whether actions are indeed brought, since the follow-up of CNDH's recommendations is based exclusively on information furnished in writing by the authorities without any corroboration of the accuracy of the information.

14. The lack of interest on the part of the Government Procurator's Office in first properly verifying whether torture took place is shown by the fact that in 17.6 per cent of the cases arrest warrants were denied.

15. The impunity which prevails in Mexico is perhaps best shown, however, by the fact that in the case of the 112 recommendations relating to torture made by the CNDH the Government Procurator's Office decided not to bring criminal actions in 44 instances. In other words, the Government Procurator's Office assumed the role of a court and absolved those responsible for acts of torture.

16. Since, under the Constitution, the Government Procurator's Office has the monopoly of bringing criminal actions, it is safe to say that in these 44 cases 16/ the perpetrators will continue to enjoy complete impunity.

17. Moreover, 34 of these recommendations, accounting for 77 per cent of the total, are considered to have been fully implemented. This is serious, having

regard to the fact that, once the CNDH has declared a recommendation implemented, further investigation by the authorities and punishment of the perpetrators are virtually impossible. We therefore consider that the National Commission is approving impunity inasmuch as its recommendations relating to cases of torture are declared implemented and no criminal action is brought against any public officials.

18. According to all the information we have furnished, even in the 253 cases in which criminal actions were brought against public officials, only 7 persons were convicted 17/ and in at least 73 cases 18/ the criminal actions remained without effect and most of the persons involved were charged with misdemeanours and were released on recognizance.

19. It is also worth mentioning that in all the cases in which the CNDH made recommendations relating to cases of torture, notwithstanding the visible injuries suffered by the detainees, investigations were not begun to determine the cause of the injuries, except in those cases where the victim died. In other words, for an act of torture to be investigated in Mexico, it is necessary for the CNDH to make a recommendation in respect of the case. Furthermore, if in the case of grave offences such as acts of torture in respect of which a recommendation is made the perpetrators enjoy impunity, what can be expected in those cases involving unlawful detention, holding incommunicado, etc., where the National Commission has made no recommendation?

20. On 9 May 1997, following recommendations made to the Government of Mexico by the United Nations Committee against Torture, the Mexican Department of Foreign Affairs stated in a press release that "the fact that there is no impunity in Mexico is demonstrated by the fact that of 105 recommendations made by the National Human Rights Commission relating to allegations of torture, 72 were fully implemented, 32 were partly implemented, 2 recent recommendations are still pending, and only one recommendation was accepted by the High Court of Justice of the State of Sinaloa". 19/

21. In reality, however, of the 112 recommendations relating to acts of torture made to date by the CNDH 20/, 90 (80 per cent) are considered to have been fully implemented. 21/ However, as we have seen, this does not guarantee that there is a total absence of impunity. It demonstrates rather the National Commission's lack of independence and the limited effectiveness of non-jurisdictional procedures in Mexico.

22. Even if the law is strengthened, in the absence of a political will to punish those responsible for acts of torture, impunity will continue to prevail in Mexico and the practice of torture and other violations of human rights will continue as well.

23. We ask the international community to voice its concern about the impunity that prevails in Mexico and to urge the Mexican Government to guarantee the independence and impartiality of the National Human Rights Commission. We also request the Commission on Human Rights to appoint a Special Rapporteur for Mexico.

Notes

1/ Statement by the delegation of Mexico under agenda item 8 at the fifty-third session of the United Nations Commission on Human Rights, 27 March 1997.

2/ Criminal actions brought fines, warnings, disqualifications, dismissals, etc.

3/ Consideraciones sobre 2379 dias de labores de la CNDH, Informe Semestral Junio-Diciembre de 1996. CNDH, December 1996.

4/ Gaceta de la CNDH, No. 15, October 1991.

5/ It was recommended that investigations be carried out and criminal actions brought against at least 427 public officials who participated directly in various acts of torture and against 204 public officials for other unlawful acts. Criminal actions were brought against only 253 public officials.

6/ 31 cases.

7/ Promulgated in 1986 and amended in 1991.

8/ Only three public officials have been convicted, one of them for homicide and torture. In five cases, arrest warrants were not executed. One arrest warrant was denied and in two cases an order for release was made.

9/ Of the 22 public officials against whom criminal actions were brought, only four were convicted. Five arrest warrants were not executed and two were denied.

10/ Third periodic report of the Government of Mexico under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, June 1996.

11/ This happened in 22 cases following recommendations made by CNDH concerning acts of torture, when eight arrest warrants were denied while two persons charged with abuse of authority were released, as was one charged with searching a dwelling. In one case a warrant was not executed.

12/ Violation of rights, causing bodily harm, offences against the administration of justice, false statements, complicity and abuse of public function.

13/ Criminal actions were brought against 82 public officials in respect of such offences. Arrest warrants were denied in 21 cases. In eight cases the release of the accused was ordered. One arrest warrant remained without effect owing to prescription and an application for amparo was allowed in six cases.

14/ In the 96 cases in which criminal actions were brought as a result of recommendations by the CNDH relating to torture, the Commission does not specify the offences in respect of which the actions were brought.

15/ 50.6 per cent of cases.

16/ In these particular cases, the CNDH recommended that investigations should be carried out and criminal actions brought against 181 public officials who participated directly in acts of torture and against 81 public officials who participated in other crimes.

17/ Five of these cases involved homicide.

18/ Forty-three arrest warrants denied, 11 arrest warrants were not executed, 7 arrest warrants were opposed by applications for amparo, in 10 cases the release of the accused was ordered and in 2 cases there was prescription.

19/ La Jornada, 10 May 1997, p. 68.

20/ According to the latest annual report of the CNDH, dated 6 June 1997.

21/ These data relate specifically to matters connected with acts of torture as referred to in the recommendation.